

Application Serial No. 10/602,981  
Art Unit: 1743

**REMARKS**

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Continued Examination Under 37 C.F.R. 1.114

Applicants thank the Examiner for withdrawing the finality of the previous Office Action and for entering Applicants' submission filed on December 21, 2005.

Further, Applicants thank the Examiner for fully considering Applicants' previous amendments and arguments and for withdrawing certain rejections of the previous Office Action.

Drawings

Applicants thank the Examiner for determining the drawings filed on December 21, 2005 as acceptable for overcoming the drawing objections mentioned in the previous Office Action.

Cancellation of Claims 2, 7, and 16-17

Claims 2, 7, and 16-17 are canceled without prejudice, waiver, or disclaimer. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of the canceled claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the canceled subject matter to the public.

Claim Rejections under 35 U.S.C. § 103(a)

(a) Claims 1, 7, 13, 15-16, 18-22, and 39-45 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent 6,692,702 to *Burshteyn et al.* Applicants respectfully traverse the rejection.

Nevertheless, to expedite prosecution and facilitate early allowance of the claims, Applicants have amended the claims herein in a manner to obviate the rejections. Claims 7 and 16 have been canceled, thus rendering rejection of these claims moot.

Claim 1 has been amended to incorporate the subject matter of claim 2, which has not been rejected based on *Burshteyn*. Therefore, claim 1 as amended includes features that are not taught or suggested by *Burshteyn*, as admitted by the Office. Applicants respectfully request that the rejection be withdrawn.

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Claim 15 has been amended to incorporate the subject matter of claim 2, which has not been rejected based on *Burshteyn*. Therefore, claim 15 as amended includes features that are not taught or suggested by *Burshteyn*, as admitted by the Office. Applicants respectfully request that the rejection be withdrawn.

Claim 39 includes the step of “spreading the sample mixture over a bottom surface of a reaction vessel through low speed centrifugation....” This step is not taught or suggested by *Burshteyn*. Indeed, *Burshteyn* teaches away from centrifugation. For example, in its Background section, the *Burshteyn* reference states:

A need therefore exists for an apparatus and method for quickly and efficiently removing interferants from a cell sample prior to analysis. In addition, the apparatus and method should minimize the risk of exposure to infectious blood because of operator handling of the blood cell sample. An apparatus that performs the foregoing method with only negligible cell loss, and does not expose cells to high gravitational forces or cell packing caused by centrifugation would be especially advantageous.

*Burshteyn* at col. 2, lines 46-54. A claim cannot be deemed obvious in view of a reference if the reference “teaches away” from the claim. *See In re Gurley*, 2 F.3d 551, 31 USPQ2d 1130, 1131 (Fed Cir. 1994) (“A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. ... in general, a reference will teach away if it suggests that the line of development flowing from the reference’s disclosure is unlikely to be productive of the result sought by the applicant.”). In the instant case, the Background section and other aspects of the *Burshteyn* reference teaches away from the use of centrifugation. The Office appears to understand that *Burshteyn* does not teach or suggest the feature of low speed centrifugation by virtue of the fact that claim 24, for example, which recites the feature of “wherein the centrifugation is at low speed,” has not been rejected based on *Burshteyn*. Therefore, claim 39 includes features that are allowable over *Burshteyn*.

Because independent claims 1, 15, and 39 are allowable, then for at least this reason, their dependent claims 13, 15, 18-22, and 40-45 are also allowable. Applicants therefore respectfully request that the rejection of these claims be withdrawn as well.

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(b) Claims 1-3, 5, 8, 10-12, 15, 17-31, and 35-46 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent 5,620,898 to *Yaremko et al.* in view of U.S. Patent 5,308,990 to *Takahashi et al.* and U.S. Patent 6,008,040 to *Datar*. Applicants respectfully traverse the rejection.

Nevertheless, to expedite prosecution and facilitate early allowance of the claims, Applicants have amended the claims herein in a manner to obviate the rejections. Claims 2 and 17 have been canceled, thus rendering rejection of these claims moot.

Claim 1 has been amended to incorporate the subject matter of claim 7, which has not been rejected based on *Yaremko* in view of *Takahashi et al.* and *Datar*. Therefore, claim 1 as amended includes features that are not taught or suggested by the cited references, as admitted by the Office. Applicants respectfully request that the rejection be withdrawn.

Claim 15 has been amended to incorporate the subject matter of claim 7, which has not been rejected based on *Yaremko* in view of *Takahashi et al.* and *Datar*. Therefore, claim 15 as amended includes features that are not taught or suggested by the cited references, as admitted by the Office. Applicants respectfully request that the rejection be withdrawn.

Claim 23 has been amended to include a step that includes all of the subject matter of claim 13, which has not been rejected based on *Yaremko* in view of *Takahashi et al.* and *Datar*. Therefore, claim 23 as amended includes features that are not taught or suggested by the cited references, as admitted by the Office. Applicants respectfully request that the rejection be withdrawn.

Claim 39 has been amended to incorporate the subject matter of claim 33, which has not been rejected based on *Yaremko* in view of *Takahashi et al.* and *Datar*. Therefore, claim 39 as amended includes features that are not taught or suggested by the cited references, as admitted by the Office. Applicants respectfully request that the rejection be withdrawn.

Because independent claims 1, 15, 23, and 39 are allowable, then for at least this reason, their dependent claims 3, 5, 8, 10-12, 18-22, 24-31, 35-38, and 40-46 are also allowable. Applicants therefore respectfully request that the rejection of these claims be withdrawn as well.

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### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Further, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephone conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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